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Supreme Court, U. S.
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In the Supreme Court of the United States

October Term, 1972
No. 72-855

ALLEGHENY AIRLINES, INC.,
Petitioner

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION, and Its Chairman, GEORGE I. BLOOM, and WILLIAM F. O'HARA, JAMES McGIRR KELLY, DANIEL HUYETT, III, and LOUIS J. SPARVERO, Members of the Commission,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION

PHILIP P. KALODNER
DANIEL F. JOELLA
Attorneys for Respondents

Pennsylvania Public Utility Commission
118 North Office Building
P.O. Box 3265
Harrisburg, Pennsylvania 17120
(717) 787-6428

Sherwin Printing Co., Law Printers, Box 169, Sayre, Pa. 18840

INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statement of the Case	3
Argument:	
Summary of Argument	9
The Petition for the Writ should be denied	10
(1) There is no substantial federal question involved	10
(2) The instant case clearly is one for the application of federal abstention	10
(3) There could have been no substantial federal issues involved in the instant proceeding	13
Conclusion	14

TABLE OF CITATIONS

CASES:

Braniff Airways v. Nebraska State Board, 347 U.S. 590	14
Braniff Airways, Inc. v. Texas Aeronautics Commission, 400 U.S. 943 (1970)	14
Harrison v. N.A.A.C.P., 360 U.S. 167 (1959)	11
Martin v. Creasy, 360 U.S. 219 (1959)	11

Northwest Airlines v. Minnesota, 322 U.S. 292 (1944) 14

People v. Western Airlines, 118 Cal. 2d 572 (1954), dismissed "for the want of a substantial Federal question," sub. nom. Western Airlines v. California, 348 U.S. 859 (1954) 14

Rice v. Chicago Board of Trade, 331 U.S. 247, 255, 256 12

Rice v. Santa Fe Elevator Corporation, 331 U.S. 218 12

United Airlines v. Public Utilities Commission, 37 Cal. 2d 1 (1952). Dismissed "for the want of a substantial Federal question", 342 U.S. 908 (1952) 14

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OPINIONS BELOW

The opinion of the Court of Appeals (App. 13a) is reported at 465 F. 2nd 237. The Opinion of the United States District Court for the Eastern District of Pennsylvania (App. 1a), entered November 10, 1970, is reported at 319 F. Supp. 407.

JURISDICTION

The judgment of the Court of Appeals (App. 29a) was entered on July 21, 1972. A timely petition for rehearing was denied on September 13, 1972 (App. 31a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

QUESTION PRESENTED

Under the undisputed facts, as found by the District Court after full stipulation of facts by the parties, did the District Court *abuse its discretion* in applying the doctrine of federal abstention, and did the Court of Appeals and the Court of Appeals en banc err in concluding that the District Court did not abuse its discretion in the circumstances?

STATEMENT OF THE CASE

The instant petition of Allegheny Airlines, Inc. (Allegheny) results from a suit brought by Allegheny seeking (1) a declaration that it is not subject to the Pennsylvania Public Utility Law nor the Rules and Regulations of the Pennsylvania Public Utility Commission (Commission or P.U.C.), and (2) a permanent injunction restraining issuance and enforcement of the Commission's orders purporting to be pursuant thereto.

After timely answer filed by the P.U.C. denying and controverting the legal conclusions set forth in Allegheny's complaint, *the parties filed a full stipulation of the facts* to be used by the Court, insofar as might be necessary, as a basis to determine the proper disposition of Allegheny's complaint. The parties filed cross motions for summary judgment. Briefs were filed by the parties and by the Civil Aeronautics Board (C.A.B.) and the National Association of Regulatory Utility Commissioners (NARUC) as amicus curiae. However, the C.A.B. expressly and emphatically took *no position* on the issue now before your Honorable Court, the issue of federal abstention. After consideration of the aforesaid briefs and oral argument, the Honorable Alfred A. Luongo, for the United States District Court for the Eastern District of Pennsylvania, denied the motion of Allegheny and granted the motion of the defendant Commission for summary judgment to the extent that it had sought dismissal of Allegheny's complaint.

In these proceedings, plaintiff, Allegheny, sought an injunction restraining defendants, the Pennsylvania Public Utility Commission and the members thereof, from carrying out their function and fulfilling their duty under the Pennsylvania Public Utility Law of supervising, maintaining and enforcing adequate, efficient, safe and reasonable common carrier air transportation service in the carriage of passengers and property, by air, for compensation, *between points within the Commonwealth of Pennsylvania, in intrastate commerce.* In substance, Allegheny contended that it may cease, interrupt, discontinue, commence and/or abandon *intrastate* air service between two points within the Commonwealth of Pennsylvania (including service for which it sought, was granted, and held a certificate of public convenience by the Commission) at its own whim; that it may, in effect, disregard the interests and needs as well as the accommodation of Pennsylvania residents, disregard the laws of the Commonwealth of Pennsylvania and the Rules and Regulations of the Commission, and disregard the orderly administration and regulation of transportation within the State of Pennsylvania; and that it now has become so big that the Federal Courts must allow it to do so. However, the Commission contended that both the law and the facts are otherwise and that Allegheny, despite its tremendous growth in size, must still abide by the Pennsylvania Public Utility Law and the Rules and Regulations of the Commission, *insofar as such regulation is permitted under the provisions of the Constitution of the United States and the Acts of Congress.*

Initially, Allegheny had filed an application with the Pennsylvania Public Utility Commission seeking certification of rights *to transport property* by air in intrastate commerce within Pennsylvania, on December 30, 1940. Pursuant thereto the Commission granted rights to Allegheny (then under the corporate name of All American Aviation, Inc.) by order dated August 19, 1941, to transport *property* in intrastate commerce by air between specified points in Pennsylvania over specified routes within Pennsylvania. Allegheny first filed an application with the Commission seeking certification of right to transport *persons and property* in intrastate commerce by air within Pennsylvania on November 1, 1948. The Commission approved the application on March 21, 1949 and issued a certificate of public convenience on March 28, 1949.

Allegheny, in accordance with the Pennsylvania Public Utility Law and the Pennsylvania Commission's Aircraft Regulations, from time to time thereafter, sought and received the approval of the Pennsylvania Commission to institute specific new and additional intrastate air service routes, when appropriate, and to abandon or suspend various specific intrastate air service routes when that was found appropriate by the Commission. In recent years, Allegheny, when it felt it was to its advantage to do so, abandoned various Pennsylvania intrastate markets without receiving or seeking Commission approval. Allegheny from time to time offered a variety of excuses for its failure to seek such approval, but seldom offered the same excuse twice in succession. This led to the Commission's rule to show cause against

Allegheny, which rule commenced the formal proceedings which ended with the Commission's order of June 23, 1969. Such order discussed at length all of Allegheny's contentions expressed or implied and found no merit therein. Accordingly, the Commission assessed a penalty against Allegheny and ordered Allegheny to file the necessary papers to reflect properly the rights granted to it by the Commission and the rights which Allegheny was entitled to exercise and intended to exercise. Allegheny did not appeal said order—nor did Allegheny comply with it. After the time for appeal had passed, the Commission commenced further proceedings to enlarge and enforce said order. Only then did Allegheny advise the Commission that it contemplated instituting and prosecuting proceedings in the Federal District Court, and requested that the Commission hold further enforcement proceedings in abeyance. To date, the Commission voluntarily has done so.

In the proceedings before the Commission, the basic issue raised by Allegheny was the *interpretation* by the Commission of its rules and regulations and whether such interpretation was in accord with Pennsylvania state law. Issues of alleged burden on interstate commerce and Federal preemption were only *inferentially, vaguely and incidentally* raised as alternative issues. Before the District Court, Allegheny emphasized the alleged incorrect *interpretation* by the Commission of its rules and regulations and the alleged burden on interstate commerce.

The District Court, in granting the Commission's motion for summary judgment, *found that although*

Allegheny's complaint did not properly involve a federal question, the Court nevertheless had jurisdiction on the grounds of diversity of citizenship. However, the District Court concluded that because, inter alia, (1) the dispute predominantly affected only local matters, (2) the dispute involved an unsettled and untried question of state law, (3) Pennsylvania law provides adequate judicial review, and Allegheny had inequitably tried to circumvent state procedures, Allegheny's evasion of state procedures, under the circumstances, should not be *rewarded* by a federal *court of equity.* Accordingly, the District Court abstained from exercising its jurisdiction.

Upon appeal to the United States Court of Appeals for the Third Circuit, that Court, after thoroughly reviewing all of the facts and the applicable law and having held oral argument thereon, concluded that the District Court did not abuse its discretion in applying the doctrine of federal abstention in the circumstances of this case. Before the Court of Appeals, Allegheny depended almost solely on the unsupported allegations of *implied* federal preemption. *Nevertheless, Allegheny admitted before the Court of Appeals, as it had before the District Court and the Commission, that the Federal Aviation Act does not preempt all aviation or even all economic regulation of aviation and that the Commission had the undoubted right to grant and regulate purely intra-Pennsylvania rights.* In the circumstances, the Court of Appeals held that the District Court had not abused its discretion.

Thereafter, Allegheny petitioned for rehearing before the Court of Appeals en banc. Unable to find

any abuse of discretion, the Court en banc denied the petition for rehearing.

The petition, now before your Honorable Court, followed.

ARGUMENT

Summary of Argument

There is no basis for the issuance of the writ sought. On the basis of the facts found by the District Court from the facts stipulated to by the parties, petitioner clearly and unquestionably should not be granted equitable relief—or rewarded in any way—by the Federal Courts.

This case provides a classic example (1) of why, how and where the doctrine of federal abstention should and does apply; (2) of the well-established principles of equity which require a denial of relief to a party who is guilty of misconduct or who has not displayed even the most rudimentary fairness in respect to the matter in controversy and who attempts to benefit by its own unfairness and, consequently does not come into Court with clean hands and (3) of the equally well-established principle of equity which requires the denial of injunctive relief where no irreparable injury is shown and where there is adequate remedy at law which the party seeks to circumvent.

All the law applicable to the facts in the instant case is clear and well-settled, and there are no contradictory federal appellate court opinions.

There was, is, and can be no substantial federal question involved in these proceedings; nor should there be.

The Petition for the Writ Should Be Denied

The petition for the writ should be denied, inter alia, for the following reasons:

(1) There is no substantial federal question involved.

The issue before your Honorable Court is neither a federal issue nor a substantial issue. It involves only the narrow issue of the propriety of the exercise of the District Court's discretion in determining whether, under the peculiar and unique facts of this case, the Federal Court should grasp litigation where the dispute involves only a previously unraised question of state law, and the Order of the state agency raises no federal issues, predominantly affects local matters, and applies, and is intended to apply, only to intrastate commerce; and where there is available to the aggrieved party more than adequate state judicial review.

(2) The instant case clearly is one for the application of federal abstention.

There are myriad cases holding that federal abstention is proper; there are myriad cases holding that federal abstention is not proper. However, though this superficially appears to be contradictory, it is the very essence of consistency for the propriety of the application of the doctrine of federal abstention depends upon the facts involved in each case. Each and all of the referred-to myriad cases may be correct and proper. As the facts go, so goes the application of the doctrine.

The District Court and the Court of Appeals and the Court of Appeals en banc carefully examined the peculiar stipulated facts of this case and there was, is, and can be no doubt that the District Court's discretion was wisely used. The opinions of both courts discuss the peculiar facts of the instant case, and also discuss various cases involving the question of when the doctrine of federal abstention is applicable. To further discuss them or others at length would be repetitious and merely an affectation of learning and possibly an affront to your Honorable Court. Suffice it to say that your Honorable Court has, on frequent occasions, held that among circumstances which should impel a Federal Court to abstain from blocking exercise by state officers of their appropriate functions, are the desirability of avoiding unseemly conflict between two sovereignties, unnecessary impairment of state functions, and premature determination of constitutional questions. See *Martin v. Creasy,* 360 U.S. 219 (1959). All those circumstances are present in the instant case. Your Honorable Court also has held many times that Federal Courts should not adjudicate state enactments until state courts have been afforded reasonable opportunity to pass on them because unnecessary interference by Federal Courts with proper and validly administered state concerns must be avoided at all cost, and because a scrupulous regard for rightful independence of state courts should at all times actuate the federal courts. See *Harrison v. N.A.A.C.P.,* 360 U.S. 167 (1959). The instant case before your Honorable Court involves (as clearly found by the District Court and affirmed by the Court of Appeals and

the Court of Appeals en banc) inter alia, the following circumstances which make the abstention doctrine applicable:

(a) the dispute involves predominantly local matters;

(b) the dispute involves a previously unraised question of state law;

(c) Pennsylvania law provides adequate judicial review;

(d) petitioner apparently is deliberately attempting to create federal-state conflict where there is, should be, and need be none;

(e) petitioner did not come into equity court with clean hands.

In cases such as the instant case, any claim of supersedure should be reserved, if at all, in state proceedings. *Rice v. Chicago Board of Trade*, 331 U.S. 247, 255, 256; compare *Rice v. Santa Fe Elevator Corporation*, 331 U.S. 218.

Petitioner relies heavily on the *Chemical Specialties* case. There, as in all cases cited by petitioner, the facts involved and consequently the law involved are inapposite. There was an *express* preemption involved in *Chemical*. In the instant case there is no expressed preemption involved. In fact, there is not even an implied preemption involved, but only a vague self-contradicted unsupported assertion that there might be a *partial* implied preemption which petitioner has never been able to describe, define or delineate. In the *Chemical* case the lower court was reversed, primarily because it did not have a fac-

tual, evidentiary record before it. In the instant case there was a stipulation of all the relevant and material facts. In the *Chemical* case, the Court clearly differentiated factual situations (such as we have in the instant case) where the claim rests on the Commerce Clause alone or on a federal statute without a preemption clause; where there is no claim that Congress has *fully* occupied the field or that there is *necessarily irreconcilable* conflict; and where a full record has been presented and fully briefed and argued to the District Court.

Clearly and conspicuously, the *Chemical* case as well as all others cited by petitioner, involve totally different and inapplicable factual basis and circumstances. *Every appellate decision must be understood to apply only to the facts upon which it is predicated and to extend only to what, so understood, it actually decides.*

(3) There could have been no substantial federal issues involved in the instant proceeding.

Even if petitioner had been able honestly to allege the necessary facts and properly could have raised the issue it was apparently attempting to raise, there would have been no substantial federal issue involved. In similar cases, where there was the factual support which is lacking here and where appropriate procedures were followed, your Honorable Court held that there was no substantial federal issue and sanctioned the economic regulation by the states of interstate air carriers who were also intrastate instrumentalities: See:

Braniff Airways, Inc. v. Texas Aeronautics Commission, 400 U.S. 943 (1970);

People v. Western Airlines, 118 Cal. 2d 572 (1954), dismissed "for the want of a substantial Federal question," sub. nom. *Western Airlines v. California,* 348 U.S. 859 (1954);

United Airlines v. Public Utilities Commission, 37 Cal. 2d 1 (1952). Dismissed "for the want of a substantial Federal question", 342 U.S. 908 (1952);

Northwest Airlines v. Minnesota, 322 U.S. 292 (1944);

Braniff Airways v. Nebraska State Board, 347 U.S. 590.

CONCLUSION

For the foregoing reasons, in addition to the reasons set forth in the opinions of the District Court and the Court of Appeals, the petition for certiorari should be denied.

Respectfully submitted,

DANIEL F. JOELLA
PHILIP P. KALODNER
Attorneys for Respondents

P. O. Box 3265
Harrisburg, Pennsylvania 17120